

THE SPORTS LAW  
REVIEW

SIXTH EDITION

Editor  
András Gurovits

THE LAWREVIEWS

# THE SPORTS LAW REVIEW

SIXTH EDITION

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# PREFACE

*The Sports Law Review*, in its sixth edition, is intended as a practical, business-focused legal guide for all relevant stakeholder groups in the area of sports, including sports business entities, sports federations, sports clubs and athletes. Its goal is to provide an analysis of recent developments and their effects on the sports law sector in 20 jurisdictions, and serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities. Specific emphasis is put on the most significant developments and decisions of the past year in the relevant jurisdictions that may be of interest for an international audience.

*The Sports Law Review* recognises that sports law is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. In addition, it covers the local legal frameworks that allows sports federations and sports governing bodies to set up their own internal statutes and regulations, as well as to enforce these regulations in relation to their members and other affiliated persons. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that jurisdiction, these statutes and regulations, if enacted by international sports governing bodies, such as FIFA, UEFA, FIS, IIHF, IAAF and WADA have a worldwide reach. Sports lawyers who intend to act internationally or globally must, therefore, be familiar with these international private norms if and to the extent that they intend to advise federations, clubs and athletes that are affiliated with such sports governing bodies. In addition, they should also be familiar with the relevant practice of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as far as it acts as the supreme legal body in sport-related disputes. Likewise, these practitioners should have at least a basic understanding of the Swiss rules on domestic and international arbitration as Swiss law is the *lex arbitri* in CAS arbitration.

While sports law has an important international dimension, local laws remain relevant in respect of all matters not covered by the statutes and regulations of the sports governing bodies. This growing international dimension means that athletes, sports clubs and sports federations are increasingly operating in an international environment and dealing with a variety of jurisdictions. As a result, the need for an international regulation of international sport is growing, and more and more specific legal assessments of individual aspects of local law are required, in particular in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies. The primacy of local laws is of particular importance in international employment relationships; for example, between clubs and foreign players, where the local laws of the clubs usually provide for a set

of mandatory provisions that may impede performance by the athletes of their contractually agreed rights as regards the employers, should they not fulfil the employment agreement.

Each chapter of this sixth edition begins by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match-fixing.

In the final sections of each chapter, the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

Each chapter of this sixth edition of *The Sports Law Review* has been provided by renowned sports law practitioners in the relevant jurisdiction. As the editor of this publication, I would like to take the opportunity to thank all of the authors for their skilful and insightful contributions to this publication. I trust that you will find this global survey informative and will avail yourselves at every opportunity of the valuable insights contained herein.

**András Gurovits**

Niederer Kraft Frey Ltd

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August 2020



# ITALY

*Edoardo Revello, Marco Vittorio Tieghi, Antonio Rocca and Federico Venturi Ferriolo<sup>1</sup>*

## I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

### i Organisational form

The Italian Olympic Committee is the highest authority of the Italian sports system, defined as the Confederation of National Sports Federations and Associated Sports Disciplines (CONI).<sup>2</sup> CONI is committed to organising, overseeing and promoting national sport, representing the Italian sports movement during the Olympic Games.

National sports federations (FSNs) and the associated sports disciplines (DSAs) are non-profit associations with legal personality regulated under private laws with their own regulations and statutes in compliance with the provisions of the affiliated international sports federations, the Olympic Charter and the directives issued by the International Olympic Committee and CONI.<sup>3</sup> FSNs and DSAs must obtain recognition by CONI to manage – on an exclusive basis – a sport discipline in Italy and represent it abroad.

The main stakeholders of the Italian sports industry are the associations and clubs, both professional and amateur, in addition to the athletes, managers, coaches, athletic trainers and sporting doctors.

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1 Edoardo Revello and Marco Vittorio Tieghi are managing directors and co-founders of SportsGeneration Srl, Antonio Rocca is managing director and founder of AR Sports & Law, and Federico Venturi Ferriolo is Co Head of Sports at LCA Studio Legale and founder of OlympialeX.

2 Established by Law No. 426 of 16 February 1942 as a private body, with the Melandri Decree (Legislative Decree No. 242 of 23 July 1999), CONI became a public entity, but is incorporated under private laws. With the issuing of the Pescante Decree (Legislative Decree No. 15/2004), CONI became a ‘confederation’. Following the enactment of the Budget Law 2019 (Law No. 145 of 30 December 2018), the Italian government established a public company, Sport e Salute SpA, with the main objective of providing general services in favour of sport, according to the directives and guidelines of the government and not of CONI. This new entity has been preliminarily considered by the IOC as a potential interference in sport politics, thus threatening the autonomy of CONI in breach of the Olympic Charter. Therefore, the IOC required the Italian authorities to take appropriate actions to guarantee CONI’s autonomy from any political influences.

3 Article 20 of the CONI Statute.

## **ii Corporate governance**

After the enactment of Law No. 190 of 6 November 2012, in 2013, CONI introduced the Code of Sporting Conduct, setting out the fundamental, mandatory and binding duties of loyalty, fairness and probity that must be met by each operator in the Italian sports industry.<sup>4</sup> To ensure the above duties, CONI introduced the figure of the ‘guarantor’ that reports any cases of suspected violation to the competent bodies for disciplinary matters. In 2014, CONI reformed the Italian sports justice system by modifying the Sports Justice Code,<sup>5</sup> adopting a comprehensive regulation of sports procedures with the introduction of two new bodies: the General Public Prosecutor’s Office and the Sports Supreme Court.

## **iii Corporate liability**

Sports companies and associations are liable for the offences committed by those who represent them, as their directors, unless they can prove they have taken all possible precautions to avoid the offences.<sup>6</sup> For the purpose of setting up this responsibility, the highest body of sports justice stated the following: ‘The Sports Justice Code punishes . . . by way of strict liability, the company with which the author of the unlawful sporting conduct is registered, regardless of the fact that this offence is the result of behaviours involving the same company.’

The company’s strict liability shall be recognised ‘even when the unlawful conduct committed by one of its members is counterproductive to the fate of the company, such as when a member is held responsible for contributing to altering the outcome of a match to the detriment of their own team’.<sup>7</sup>

# **II THE DISPUTE RESOLUTION SYSTEM**

## **i Access to courts**

Italian access to sports justice takes place through the affiliation process: the act of affiliation allows the option to resort and subject a person or an entity to sports courts. In essence, the sporting justice obligation stems from the provision of Article 2 of Decree No. 220 of 19 August 2003,<sup>8</sup> which governs the independence of the Italian sports legal system. Briefly, sports judges (under the CONI, federations and associations umbrella) are competent for the following issues: the observance and application of the regulatory, organisational and statutory provisions of the national sports system and its articulations to guarantee the correct performance of sports activities; and all matters related to disciplinary sporting sanctions.

Upon exhaustion of internal sports remedies – and without prejudice to the jurisdiction of the ordinary judge for economic disputes between companies, associations and athletes – any other matter relating to acts issued by CONI or any national federations that is not dedicated to the above-mentioned sports judges, shall be referred to the exclusive jurisdiction of the administrative judge. In the case of non-compliance (i.e., should an affiliate refer an issue to the ordinary courts), the affiliate might be seriously sanctioned, or banned, from the

---

4 According to Legislative Decree No. 231 of 8 June 2001, sports clubs shall adopt an internal code of conduct that defines the rights, duties and responsibilities of each member.

5 Adopted by the National Council on 11 June 2014 with Resolution No. 1510-1511.

6 See Article 4 of the Justice Regulations of the Italian Federation of Equestrian Sports; see also Article 44 of the Sports Justice Code of the Italian Basketball Federation.

7 See CONI Sports Supreme Court, United Sections, Decision No. 58 of 24 November 2015.

8 Available at [www.parlamento.it/parlam/leggi/decreti/03220d.htm](http://www.parlamento.it/parlam/leggi/decreti/03220d.htm).

sport association concerned. The relationship between the ordinary and the sporting justice system has always been a vexed question<sup>9</sup> and one that was questioned in a judicial order of the Regional Administrative Court of Lazio (TAR Lazio).<sup>10</sup>

Nevertheless, the ability to resort to sports judicial proceedings is specifically regulated by CONI's Sports Justice Code,<sup>11</sup> which establishes sports judges in each federation, namely the national sports judge, the local sports judges, the Sport Court of Appeal, the Federal Tribunal and the Federal Court of Appeals.<sup>12</sup>

## ii Sports arbitration

In consideration of the constitutional principle of prohibition of special jurisdiction, arbitration is seen as an adequate vehicle to preserve the independence of the sports system<sup>13</sup> and ensure compliance with the regulations and principles of the federations. Arbitration is generally applied to resolve disputes in connection with economic rights and labour relationships. To this extent, it is explicitly mentioned in Article 4 of Law No. 91 of 2 March 1981<sup>14</sup> that an arbitration clause shall be inserted in employment contracts, requiring that the disputes shall be brought before a panel constituted according to the applicable collective bargaining agreement. The functioning of such arbitration before the football leagues is regulated by specific procedural rules that are attached to the relevant collective bargaining agreement. For the sake of clarity, all professional players, coaches or trainers have their own collective bargaining agreement of reference and relevant competent arbitration panel. The latter renders awards directly enforceable through the competent league and federation.

## iii Enforceability

Arbitral awards have contractual power between the parties and can be directly enforced only within the federation; otherwise, they should be lodged with a special procedure before the ordinary court, pursuant to Articles 566 and 808 of the Italian Civil Procedural Code, to become final and binding.

9 A Benincampi, 'La Giustizia Sportiva e Gli Spettri Del Passato: Dubbi Di Costituzionalità e Timide Prospettive', *Olympialex Review No. 1*, July 2018, [www.olympialex.com](http://www.olympialex.com).

10 TAR Lazio, Section 1 *ter*, 11 October 2017, No. 10171. On the one hand, the possibility to resort to a specialised judge may ensure a higher and more accurate degree of expertise in the resolution of the dispute; but, on the other hand, it clashes with the constitutional principle of the right of defence, pursuant to Article 24 of the Italian Constitution.

11 See [www.coni.it/images/DEF\\_11.06.2014\\_CODICE\\_DELLA\\_GIUSTIZIA\\_SPORTIVA\\_.pdf](http://www.coni.it/images/DEF_11.06.2014_CODICE_DELLA_GIUSTIZIA_SPORTIVA_.pdf).

12 Article 3 of the CONI Sports Justice Code.

13 L Fumagalli, 'La risoluzione delle controversie sportive. Metodi giurisdizionali, arbitrali ed alternativi di composizione', *Riv. Dir. Sport.*, 1999, p. 254 et seq.

14 Law on the sports employment relationship between clubs and professional athletes, available at [www.scuoladellosport.coni.it/images/documenti/Normativa\\_Sport/Professionalismo/Legge\\_23\\_marzo\\_1981\\_n.91.pdf](http://www.scuoladellosport.coni.it/images/documenti/Normativa_Sport/Professionalismo/Legge_23_marzo_1981_n.91.pdf).

### **III ORGANISATION OF SPORTS EVENTS**

#### **i Relationship between organiser and spectator**

Italian law<sup>15</sup> regulates a tripartite relationship in connection with sporting events, composed of the organiser, the athletes (amateur or professional) and the public. The organiser can be identified as a business entrepreneur, pursuant to Article 2195 of the Italian Civil Code. The organiser's main goal is the management of the entire event, which is legally considered an economic activity, and should entail the following features: a lease agreement or ownership of the premises in which the event is held; presence of a public performance with an uncertain outcome; and differences of juridical relationships depending on whether the event is indoor or outdoor.

#### **ii Relationship between organiser and athletes or clubs**

The leagues<sup>16</sup> (i.e., the organisers) are associations that represent and protect the interests of the affiliated sports companies. The latter are assisted in the stipulation of the standard labour agreements between athletes and professional and amateur clubs. In addition, the leagues also advise on issues related to corporate organisation, communication and administrative management, as well as centralised marketing activities aimed at selling the sporting product.

#### **iii Liability of the organiser**

Organisers can be persons (rarely), entities (in the form of stock or limited companies), non-recognised associations or committees that 'assume all liabilities (civil, criminal and administrative) within the country's legal system and promote the gathering of one or more athletes with the aim of achieving a result in one or more sporting activities regardless of the public dimension of the show'. Generally, organisers are subject to a 'civil liability' pursuant to Article 2043 of the Italian Civil Code. This liability is connected to the main obligation of the organiser promoting the competition, ensuring the power of control and direction. The organiser's main obligation is to monitor the event, whether it is a single competition or a tournament. Further, the organiser has the obligation to guarantee the presence of the police at the event and ensure: the suitability and safety of the location and facilities, including the technical means in use, whether supplied by the organiser; and the athletes' aptitude to participate in the competition, in terms of both experience and psychophysical conditions.

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15 See Law of 13 December 1989, amended by Decree-Law of 8 February 2007; Law of 13 December 1989, amended by Law No. 217/2010; 'Mancino Law' No. 205/1993; Decree-Law No. 28 of 24 February 2003; Law No. 88/2003; Decree-Law No. 162 of 17 August 2005; Law No. 168 of 17 August 2005; Law No. 210 of 17 October 2005; Law No. 41 of 4 April 2007; Decree-Law No. 8 of 8 February 2007; Legislative decree on public security (12 November 2010); and Law No. 217/2010. In response to the covid-19 pandemic, the government enacted a set of specific provisions regulating rent payment suspension, revision of stadiums concession contracts and ticketing reimbursement.

16 Taking into consideration the football panorama, the leagues expressly recognised by the Statute of the FIGC are the following: Serie A National Professional League, Serie B National Professional League, the Italian Professional Football League (Lega Pro) and the National Amateur League.

#### iv Liability of the athletes

Each athlete assumes the conscious risk of exposing himself or herself to events that may cause him or her damage (i.e., the allowed risk). The Civil Supreme Court has ruled that compliance with the rules governing each sporting discipline is the fundamental principle for sporting conduct not to be punished. Therefore, to be exempt from criminal sanctions, any detrimental sporting conduct must be committed in compliance with the sportsperson's duty of loyalty.<sup>17</sup>

#### v Liability of the spectators

The Sports Supreme Court, in its decision No. 42 of 3 September 2015, established that clubs are also liable – by way of strict liability – for the conduct of their spectators. The Sports Supreme Court has specified that it is necessary to guarantee a broad interpretation of the concept of spectator, thus including all those who operate in a 'supportive environment' to the team. Clubs are also liable for the presence of discriminatory banners (even when banners discriminate between different regional traditions) within the stadium.<sup>18</sup>

#### vi Riot prevention

Parliament began developing legislation to strengthen the fight against hooliganism in 1989 by enacting Law No. 401 of 13 December 1989.<sup>19</sup> One of the most important implementations was the 'prohibition of access to sporting events' (DASPO),<sup>20</sup> which is a measure of prevention, restrictive on personal freedom, to tackle the growing phenomenon of violence in football stadiums; subsequently, also extended to other sports. The DASPO measure can be issued to spectators found guilty of violent acts during, inter alia, sporting events, by the chief of police (the Commissioner) or by a judge at the end of proceedings. If issued by the Commissioner, it applies as an administrative measure entailing the prohibition of access to areas, or areas adjacent to, where sporting events are taking place, for a period of between one and five years. If issued by a judge, it has a stronger limitation on freedom of movement and has also recently been compared to the anti-mafia administrative orders.<sup>21</sup>

17 See Civil Supreme Court, Section V, 28 March 2017, No. 33275; Civil Supreme Court, Section III, 26 January 2016, No. 1322; Civil Supreme Court, Section III, 8 August 2002, No. 12012; Civil Supreme Court, Section III, 30 March 2011, No. 7247; Penal Supreme Court, Section V, 13 March 2017, No. 11991; Penal Supreme Court, Section IV, 26 November 2015, No. 9559; Penal Supreme Court, Section V, 21 September 2005, No. 45210; Penal Supreme Court, Section V, 20 January 2005, No. 19473; and Penal Supreme Court, Section V, 2 June 2000, No. 8910.

18 For example, the new Sports Justice Code of the FIGC, as of season 2019/2020, introduced a new model to prevent and fight episodes of violence and racism – also thanks to new technologies available for clubs, such as facial recognition.

19 Available at [www.scuoladelloSPORT.coni.it/images/documenti/Normativa\\_Sport/GiustiziaSportiva/Legge\\_13\\_dicembre\\_1989\\_n.401.pdf](http://www.scuoladelloSPORT.coni.it/images/documenti/Normativa_Sport/GiustiziaSportiva/Legge_13_dicembre_1989_n.401.pdf).

20 *Divieto di accesso alle manifestazioni sportive*, established by Article 6(c)(1) of Law No. 401/89.

21 See decision of the Italian Criminal Supreme Court No. 24819/16.

## IV COMMERCIALISATION OF SPORTS EVENTS

### i Types of and ownership in rights

#### *Broadcasting rights*

The new law regulating the ownership of broadcasting rights on sports events and related marketing was passed in the form of dedicated legislation: Law No. 106 of 19 July 2007, which defines the aims, principles and criteria of the new discipline, directing the government to issue a legislative decree defining and setting the new regulations.<sup>22</sup> The government accomplished the task with the Melandri Decree (Legislative Decree No. 9 of 9 January 2008), which has introduced the concept of joint ownership of the right to broadcast the sports events by the competition organiser (i.e., the league) and the event organiser (i.e., a club).<sup>23</sup> In concrete terms, the Melandri reform assigned to the league the leading role of exclusive licensor of the audiovisual rights.<sup>24</sup>

Pursuant to Article 25 of the Decree, the allocation of resources among the parties in each competition is carried out in such a way as to guarantee the equal allocation of a prevalent share insured by the assignment of broadcasting rights. In this regard, Law No. 205 of 27 December 2017 (the Budget Law 2017) changed the allocation of the resources, ensuring greater economic stability.<sup>25</sup>

### ii Rights protection

The protection reserved for images is derived from the joint provisions of Article 10 of the Italian Civil Code and from the Italian Copyright Law.<sup>26</sup> The Civil Code establishes that if an image is displayed or published except when consented by law (or the display causes prejudice to the reputation of the person concerned), the judicial authorities may order the abuse to cease and award compensation for damages. In addition, Article 96 of the Copyright Law states that a person's likeness shall not be displayed, sold or reproduced without the individual's consent, which can, however, be subsequently withdrawn at any time.<sup>27</sup>

22 L Ferrari, 'The Ownership of Broadcasting Rights: From Individual to Collective Selling', in: Blackshaw, Cornelius, Siekmann (editors), *TV Rights and Sport: Legal Aspects*, TMC Asser Press, 2009, p. 399 et seq.

23 The Decree deals with professional tournaments organised for team sports (e.g., football or basketball). In cases of amateur team sports, the competition organiser may license the broadcasting rights.

24 The event organiser, however, maintains the exclusive ownership on 'library rights' (i.e., audiovisual recordings of matches that took place at least eight days previously) (Articles 3 and 4 of the Melandri Decree). In June 2020, the State Council issued a ruling prohibiting Sky Media exclusivity on the IPTV channel until 2022. Therefore, in the next TV rights auction will no longer be possible for any broadcaster to share the Serie A matches on the internet (see <https://www.ilsole24ore.com/art/sky-consiglio-stato-ribalta-tar-si-divieto-esclusiva-web-ADgJoXV>).

25 As regards football: 50 per cent of the sale of TV rights is divided in equal parts among all the participants in the Serie A Championship; 30 per cent on the basis of the results achieved, and 20 per cent on the basis of the number of supporters of each team. In July 2020, the Civil Court of Milan has issued an injunction order accepting the Serie A League complaint against the broadcaster Sky, which has not paid the last instalment of the TV rights of the 2019/20 season. The injunction is not immediately enforceable and has been notified to Sky Italia and Sky Italian Holdings (see <https://www.calciofinanza.it/2020/07/07/sky-decreto-ingiuntivo-serie-a/>).

26 Law No. 633 of 22 April 1941, available at [www.interlex.it/testi/l41\\_633.htm](http://www.interlex.it/testi/l41_633.htm).

27 Article 97 of the Italian Copyright Law lists exceptional circumstances from the consent, when the use is justified by the fame of or the public office covered by the person, for judicial or police requirements or for scientific, educational or cultural purposes.

The Italian Copyright Law protects the streaming of audiovisual rights by also sanctioning the final users with imprisonment and economic sanctions.<sup>28</sup> In relation to registered trademarks and club symbols, these are protected under Articles 2569 and 2574 of the Civil Code, and Article 23 of Legislative Decree No. 30/2005, to avoid unfair competition. In the case of infringement, judicial authorities may injunct against further infringements and award compensation for damages.

### **iii Contractual provisions for exploitation of rights**

#### ***Image rights***

The consent to the use of an athlete's image can be expressed in his or her contract, but remains, however, separate from it. In addition, the consent can be subsequently withdrawn at any time without incurring any contractual liability.<sup>29</sup>

The right to use an athlete's image may be licensed and assigned. Some limitations may exist to the right, such as, for example, in football: outside of football activity, the exploitation of image rights is freely negotiable by each player (observing some limitations related to the club's sponsorship agreements), while, with respect to football activity and related activities (as the club's representation), clubs can sign promotional and advertising agreements with third parties. Part of the profits are allocated to the players according to minimum percentages under the Convention in force on the regulation of advertising and promotional activities, unless negotiated individually.<sup>30</sup>

#### ***Sponsorship agreements***

The sponsorship agreement is not a typified contract, since it is not expressly regulated by the Italian Civil Code. Therefore, the related discipline is reconstructed using the general rules and principles on contracts. In the sports system, according to the specific relationship between the sponsor and the sponsee, there can be the following general categories: naming sponsor,<sup>31</sup> official sponsor, official supplier<sup>32</sup> and technical sponsor.<sup>33</sup>

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28 Articles from 171 to 174 *quinquies*. In September 2019, the Italian Financial Guard carried out an anti-piracy investigation, which resulted in blocking 114 internet websites illegally streaming sporting events. The authorities submitted a pre-emptive seizure order to the respective internet service providers operating in Italy against all the domains involved.

29 See Civil Supreme Court, Section I of 29 January 2016, No. 1748.

30 The Convention was executed, alongside the first collective bargaining agreement, between the players' union and the Italian professional football leagues in 1981, subsequently amended in 1984 and 1987.

31 For example, as of season 2018/2019, the Italian football second division league, Serie B, has been named Serie BTK as result of a commercial partnership with Indian tyre manufacturing company BKT.

32 For example, the agreement between the Italian internet provider, Aruba.it, and Racing Ducati SuperBike Team has led to an immersive cooperation by providing marketing and communication activities further to a traditional title sponsorship.

33 For a list of the jersey kits of Serie A clubs for the 2019/2020 season see [www.footyheadlines.com/2019/05/all-19-20-serie-kits-overview.html](http://www.footyheadlines.com/2019/05/all-19-20-serie-kits-overview.html).

### ***Merchandising agreements***

Merchandising agreements, given their specificity and structure, are protected in Italy by the Code of Industrial Property,<sup>34</sup> the Italian Civil Code (with the provisions on counterfeiting and unfair competition)<sup>35</sup> and the Italian Penal Code (with the provisions on counterfeiting crime and trademark usurpation).<sup>36</sup> The Italian Financial Guard has enhanced its checks in cooperation with the sports institutions to limit the sale of counterfeited products to the public.<sup>37</sup>

## **V PROFESSIONAL SPORTS AND LABOUR LAW**

### **i Mandatory provisions**

Under Italian law, the sports employment relationship between clubs and professional athletes is regulated by Law No. 91 of 23 March 1981. This mandatory labour law states the definition of professionals, which includes athletes, coaches, sporting directors and athletic trainers, who perform sporting activities under remuneration on an ongoing basis within the disciplines governed by CONI, as well as the qualifying intervention carried out by FSNs. Indeed, the federations that have obtained the qualification of a professional sporting federation are the following: the Italian Football Federation (FIGC), the Italian Cycling Federation (FCI), the Italian Golf Federation (FIG) and the Italian Basketball Federation (FIP).

Professional athletes' performances are regulated by employment contracts through direct recruitment. These contracts must be drafted in writing in the standard form set out in the collective bargaining agreement and filed within the respective federation (Article 4 of Law No. 91/81). Any departure from the standard form will be deemed null and void. The term of employment in professional contracts can be up to a maximum of five years (Article 5 of Law No. 91/81).<sup>38</sup> An arbitration clause must be included in the contract with respect to the interpretation, execution and any dispute resolution related to the employment agreements. Further, the employment contracts shall not include provisions that could in any manner limit the freedom of work and movement of professional athletes. It is also possible to have a self-employment contract, subject to the fulfilment of one of the following conditions: the sporting performance is related to only one sporting event; the athlete is not contractually bound concerning the frequency of training; or the sporting performance does not exceed eight hours a week, five days each month or 30 days each year.<sup>39</sup>

Any professional player is covered by a mandatory retirement and disability insurance as per Law No. 366 of 14 June 1973. The social security contributions are calculated with

34 Legislative Decree No. 30 of 10 February 2005 and subsequent amendments.

35 Articles 2598, 2599 and 2600.

36 Articles 473, 474, 474 *bis*, 474 *ter*, 474 *quater*, 517, 517 *ter* and 517 *quinques*.

37 On 5, 6 and 7 May 2018, Serie A and Serie B football clubs participated in the first edition of 'Day of Legality', aimed at drawing the public's attention to the fight against counterfeiting products. This initiative has been promoted by the Italian Patent and Trademark Office of the Ministry of Economic Development. On 3 April 2019, they adopted a similar project named 'Offside Counterfeiting 2' in partnership with the Italian Financial Guard (see [www.mise.gov.it/index.php/it/198-notizie-stampa/2039542-mise-guardia-di-finanza-lega-serie-a-e-lega-b-insieme-nella-lotta-alla-contraffazione](http://www.mise.gov.it/index.php/it/198-notizie-stampa/2039542-mise-guardia-di-finanza-lega-serie-a-e-lega-b-insieme-nella-lotta-alla-contraffazione)).

38 Within the FIGC, minors (i.e., those under the age of 18) can sign a professional contract for a maximum of three years.

39 Article 2 of Law No. 91/1981.



regard to the player's annual gross salary and distributed in the following proportions: two-thirds shall be payable by the registering club; and a third shall be payable by the player. In any event, the contributions shall be payable in their entirety by the club, which may then withhold the corresponding amount from the player's salary.

## **ii Free movement of athletes**

EU law applies to both professional and amateur athletes with respect to their right of free movement, by prohibiting any discrimination based on nationality, or any obstacle that may hinder this right.

With specific regard to football, the FIGC has adopted the 'locally trained rule', which imposes clubs to have a certain number of home-grown athletes, according to UEFA indications. Accordingly, the squad list of any first division club (National Professional League Serie A), must adhere to some specific criteria.<sup>40</sup>

## **VI SPORTS AND ANTITRUST LAW**

The operators of the Italian sports industry, such as clubs and consumers, must comply with antitrust rules. In this particular framework, the Competition and Market Authority (AGCM) and the Italian National Olympic Committee entered into a memorandum of understanding – with the aim of developing a synergistic action to pursue their respective institutional functions more effectively raising awareness of sports bodies regarding the protection of competition and the market.

In this regard, the AGCM has commenced investigation proceedings for alleged vexatious clauses in the contracts for the purchase of seasonal tickets and match tickets. In the AGCM opinion, these clauses would not recognise the right to reimbursement of all or part of the season ticket (or of the single ticket), in case of closure of the stadium or postponement of the match.

Finally, a sanction of over €3 million was imposed by the Competition Authority on the FIGC in proceeding No. 1812 for the violation of Article 101 of the Treaty on the Functioning of the European Union, deriving from unjustified restrictions (not imposed by FIFA and UEFA) on access to certain qualified professionals within football clubs; in particular, to sports directors, scouts and match analysts, 'in the absence of any specific legislation and, indeed, in a regulatory framework for the liberalisation of economic activities'.<sup>41</sup>

## **VII SPORTS AND TAXATION**

### **i Professional athletes**

Any remuneration paid by a club to a professional player (Italian or foreign) for his or her sporting performance is to be considered employment income and taxed accordingly under Article 49 of the Italian Tax Code (TUIR).<sup>42</sup> The club acts as a withholding agent. The

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40 Available at [www.legaseriea.it/uploads/default/attachments/documentazione/documentazione\\_m/639/files/allegati/649/cu\\_83\\_-\\_tetto\\_alle\\_rose.pdf](http://www.legaseriea.it/uploads/default/attachments/documentazione/documentazione_m/639/files/allegati/649/cu_83_-_tetto_alle_rose.pdf). In addition, with respect to a cap on the number of foreign players (in particular, non-EU players) permitted, the FIGC provides, under its rules and regulations, procedures and restrictions that a non-EU player may face when transferring to Italy.

41 See [www.agcm.it/media/dettaglio?id=281793cd-85a7-4103-9747-c44957097229](http://www.agcm.it/media/dettaglio?id=281793cd-85a7-4103-9747-c44957097229).

42 See Presidential Decree No. 917 of 22 December 1986.

remuneration of a professional player can consist of both a fixed and a variable amount. According to Article 51.6 of the TUIR, the variable amount (a bonus) is also considered employment equivalent to 50 per cent of the relative amount. In addition, benefits (such as housing or a car) are also employment income (Article 51.3 TUIR).

## ii Tax regime of income of professional athletes' image rights

Income connected to the sale or assignment of professional athletes' image rights, if the remuneration is due to the player who directly grants the use of his or her image to the club (in particular, whether it is related to a sporting performance or it refers to the exploitation of his or her personal image), is also considered as employment income.

Remuneration due to the player who grants the sponsor the use of his or her image is considered: self-employment income, if promotional activities are exercised on a permanent and professional basis;<sup>43</sup> or 'other income', if promotional activities are not exercised on a permanent and professional basis.

## iii The substitute tax regime for newly Italian tax residents

Article 1.152-159 of the Budget Law 2017 introduced a special tax regime for individuals moving his or her tax residence to Italy, providing for a substitute tax on foreign-source income equal to €100,000.<sup>44</sup> The regime applies on an optional basis and for its application it requires details of: the actual transfer of the tax residence in Italy, and the foreign fiscal residence prior to the transfer in at least nine of the 10 tax periods preceding the start of the option period. Particularly in relation to superstar players with significant amounts of foreign income, this substitute tax regime could become very attractive.

## iv Tax regime of income of professional athletes when transferring to Italy

The government has introduced an attractive tax measure with the 'Decreto Crescita'<sup>45</sup> for foreign workers coming to Italy. This Decree introduced a specific regime for foreign professional athletes transferring their tax residence to Italy from January 2020.<sup>46</sup>

## v Amateur athletes

The income of amateur athletes is subject to preferential income tax treatment. The Budget Law 2017 introduced important innovations in this respect: no imposition for income below €10,000 per year, increasing the previous annual threshold of €7,500. Any income above €10,000 is subject to a tax rate of 23 per cent.

<sup>43</sup> Article 54.1 *quater* TUIR.

<sup>44</sup> M Tenore, 'The substitute tax regime for newly Italian tax residents. Foreign players moving the tax residence to Italy may now achieve substantial tax reductions on their foreign-source income', in *EPFL Legal Newsletter No. 4*, April 2017.

<sup>45</sup> Law Decree No. 30 of 30 April 2019, converted by Law No. 58 of 28 June 2019.

<sup>46</sup> The income will benefit from a 50 per cent exemption with respect to personal income tax. Italian football clubs in particular are then incentivised to acquire foreign players, since they will negotiate players' remuneration on a net basis taking advantage of a cost saving as a consequence of the reduced tax burden, therefore offering a lower gross salary. M Tenore, 'How footballers transferring to Italy can benefit from the country's new income tax regime for sportspersons', in [www.lawinsport.com](http://www.lawinsport.com), 28 August 2019.

## VIII SPECIFIC SPORTS ISSUES

### i Doping

Anti-doping in Italy runs on a double track: the disciplinary and the criminal. From a sporting perspective, doping conduct falls within the relevant sports association jurisdiction with the application of the specific association's anti-doping regulations and the World Anti-Doping Agency rules and principles at an international level. Moreover, under Italian law, doping is also considered a criminal offence and punished pursuant to Law No. 376 of 14 December 2000<sup>47</sup> with severe penalties, including imprisonment.

### ii Betting

Law Decree No. 87 of 12 July 2018 (the Dignity Decree)<sup>48</sup> was enacted recently to fight gambling addiction, including in sporting and cultural events, by banning: the advertising of gambling and betting related to services and products; and betting and gambling providers from advertising via the media (including TV, radio, the internet and social media platforms) and on billboards.<sup>49</sup> From 14 July 2019, unlawful sponsorship and advertising may give rise to fines to the advertising contractors, calculated as the higher of 20 per cent of the value of the deal or a lump-sum of €50,000.<sup>50</sup> The Italian Communications Regulatory Authority (AGCOM) is in charge of monitoring compliance with the new legislation and has the power to sanction those in breach.<sup>51</sup> All sums raised from administrative fines will be allocated to fund the expenses of the Italian Ministry of Health.

### iii Manipulation

Match-fixing is considered a criminal offence and is regulated by Law No. 401/1989, specifying that it concerns match-fixing offering a benefit to the participant with the specific intention of manipulating the competition result even if the offer is not accepted (Article 1).<sup>52</sup> The aim of this provision is to guarantee fair play while tackling illegal sports betting, which has often been linked to criminal organisations. In addition to the consideration of match-fixing as a criminal offence, match-fixing is regulated by the CONI Sports Justice Code as a disciplinary violation.

### iv Grey market sales

One of the most relevant grey market sales issues in Italy concerns 'secondary ticketing'. This phenomenon is punished by Law No. 232/2016, which empowers the Italian Communications Regulatory Authority to monitor the secondary market sale of events' ticketing. Offenders may be sanctioned with fines of up to €180,000.

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47 See [www.salute.gov.it/imgs/C\\_17\\_normativa\\_652\\_allegato.pdf](http://www.salute.gov.it/imgs/C_17_normativa_652_allegato.pdf).

48 See [www.gazzettaufficiale.it/eli/id/2018/07/13/18G00112/sg](http://www.gazzettaufficiale.it/eli/id/2018/07/13/18G00112/sg).

49 Article 9(1) Dignity Decree.

50 Article 9(5) of the Dignity Decree does not apply to existing sponsorship agreements, which are permitted to run until their contracted expiry or 14 July 2019.

51 To this extent, AGCOM has published a set of guidelines defining its implementation (see resolution No. 132/19/CONS of 18 April 2019 available at [www.agcom.it](http://www.agcom.it)).

52 Manipulation of results is punished with imprisonment of between one month and one year and a fine of between €238 and €1,032.

## IX THE YEAR IN REVIEW

Law No. 86 of 8 August 2019 granted wide powers to the government to amend, within 30 November 2020, sports governing bodies, CONI's structure and the regulations on sports professions, sports agents, infrastructures and security.<sup>53</sup>

Following the December 2017 state-law reform on professional sports agents, the last Ministerial Decree was enacted on 24 February 2020 with the main aim to clarify the regulations on EU sports agents and the mutual recognition of their qualification.<sup>54</sup>

The government addressed the covid-19 pandemic with specific provisional measures on the sports industry, related to the limitation on activities and events, the introduction of a mandatory health protocol, tax benefits and the suspension of mandatory payments for clubs and sports entities.<sup>55</sup>

## X OUTLOOK AND CONCLUSIONS

Following the social and financial outcomes of the global covid-19 pandemic, the Italian sports industry shall necessarily face significant permanent reforms in the following months, considering also the direct involvement of the government as regards the revision of the entire sports system and the appointment of a dedicated Ministry for Youth and Sports. Further, given the rapid growth of new forms of sports activities and entertainment, such as female football<sup>56</sup> and e-sports,<sup>57</sup> a new set of rules could be enacted to cover said 'grey areas' of the sports sector. Finally, the winning candidature jointly filed by Milan and Cortina for hosting the 2026 Winter Olympic Games will certainly provide a new momentum for the entire Italian industry (also in terms of investment and infrastructure).

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53 All the measures to be enacted by the government are available at [www.sport.governo.it/it](http://www.sport.governo.it/it). On 9 July 2020, the first draft of the related Legislative Decree was released, covering many aspects of the sports industry.

54 See [www.sport.governo.it](http://www.sport.governo.it). As result of this Decree, CONI published the updated regulations on sports agents on 14 May 2020 (see [www.coni.it/images/Professioni\\_Sportive/REGOLAMENTO\\_AGENTI\\_SPORTIVI.pdf](http://www.coni.it/images/Professioni_Sportive/REGOLAMENTO_AGENTI_SPORTIVI.pdf)).

55 All these measures are available at <https://temi.camera.it/leg18/temi/le-misure-adottate-a-seguito-dell-emergenza-coronavirus-covid-19-nell-ambito-dello-sport.html>.

56 The FIGC Council announced that female football shall be recognised as professional sports as of season 2022/2023, in view also of the reform package to be enacted by the government pursuant to Law No. 86 of 8 August 2019 (see [www.figc.it/it/federazione/news/futuro-del-calcio-femminile-nuove-norme-e-via-al-professionismo-nel-2022/](http://www.figc.it/it/federazione/news/futuro-del-calcio-femminile-nuove-norme-e-via-al-professionismo-nel-2022/)).

57 In November 2019, Serie A announced the first edition of its e-sports tournament 'e-Serie A' during season 2019/2020, following the example of the major foreign football leagues (see [www.gazzetta.it/Calcio/Serie-A/21-11-2019/serie-esports-via-campionato-3501266639587.shtml](http://www.gazzetta.it/Calcio/Serie-A/21-11-2019/serie-esports-via-campionato-3501266639587.shtml)).

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